



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

FRANK TUCCIO

Serial No.: 10/659,514

Filed: September 10, 2003

For: REMOTE SENSING SYSTEM

Attorney's Docket: 1016-013P

Mail Stop PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO ACCEPT FILING OF AN
APPLICATION WHERE THE INVENTOR
REFUSES TO SIGN UNDER 37 CFR § 1.47**

SIR :

AudioAudit Inc., Mack-Cali Centre II, One Mack Centre Drive, Paramus, New Jersey 07653 ("AudioAudit"), hereby petitions for the Patent Office to accept for examination the present application without execution of a Declaration/Oath pursuant to 37 CFR §§ 1.63 and 1.64 by the inventor, as the inventor, Frank Tuccio, refuses to sign such a Declaration or Oath.

AudioAudit's interest in and to the invention of the present application is established by an Assignment from the inventor, Mr. Tuccio, to AudioAudit as recorded in the records of the United States Patent and Trademark Office at Reel 013921/Frame 0111, et seq., assigning the invention as well as referencing U.S. Provisional Application No. 60/410,632, the priority application for the present application, and "all divisions, renewals, continuations and continuations-in-part thereof."

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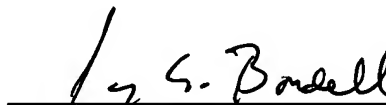
Facts and circumstances setting forth the efforts relied upon to establish that a diligent effort to obtain the signature of the inventor has been made are set forth in the annexed Declaration of James Devine, Vice President and Corporate Counsel of AudioAudit.

The last known address of inventor Frank Tuccio is 1809 Park Place, Springfield, New Jersey 07081.

Also submitted herewith is the petition fee as set forth in 37 CFR § 1.17(h) and a Declaration required by 37 CFR §§ 1.63 and 1.64 executed on behalf of AudioAudit.

Respectfully submitted,

Customer No. 022831
SCHWEITZER CORNMAN
GROSS & BONDELL LLP
292 Madison Avenue, 19th Floor
New York, New York 10017
Tel.: (646) 424-0770
Fax: (646) 424-0880



Jay A. Bondell
Attorney for AudioAudit
Registration No. 28,188

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service as First Class Mail on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
Mailing Date: March 19, 2004



Gerri De Luca



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**DECLARATION OF JAMES DEVINE
IN SUPPORT OF PETITION TO ACCEPT
APPLICATION WITHOUT SIGNATURE
OF INVENTOR**

SIR :

James Devine, being duly sworn, declares and states, as follows:

1. I am Vice President and General Counsel of AudioAudit Inc., Mack-Cali Centre II, One Mack Centre Drive, Paramus, New Jersey 07653 ("AudioAudit"). I am making this Declaration in support of AudioAudit's request that the present application be accepted for examination without a signed declaration by its inventor Frank Tuccio. I have personal knowledge of the facts and circumstances set forth herein.

2. In late summer 2002, U.S. Provisional Application No. 60/410,632 was prepared by AudioAudit's patent counsel for a Remote Sensing System invention developed by Frank Tuccio, who at that time was an employee of AudioAudit. Mr. Tuccio's development of the invention was

undertaken in his capacity as an employee of AudioAudit, for the benefit of AudioAudit, and with the understanding that all right, title and interest in and to the invention would be possessed by AudioAudit Inc. The application was filed on September 13, 2002.

3. In early 2003, Mr. Tuccio's employment was terminated by AudioAudit. In conjunction with wind-up of Mr. Tuccio's affairs for the company, he executed an Assignment, transferring all right, title and interest in and to the Remote Sensing System invention, including the provisional patent application therefor, to AudioAudit. That Assignment has been recorded in the United States Patent and Trademark Office at Reel 013921/Frame 0111, et. seq. Mr. Tuccio's discharge from AudioAudit's employ, however, was acrimonious.

4. At the instruction of AudioAudit, our patent counsel prepared the present U.S. Patent Application Mr. Tuccio's Remote Sensing System. Because of the urgency in having the application filed within the one year priority period from the filing date of the provisional application, the application was filed without Mr. Tuccio's signature. A copy of the application as filed, along with the necessary inventor's Declaration for Mr. Tuccio to sign, however, was delivered to me. I understood that it was necessary to have Mr. Tuccio, as inventor, sign the Declaration, notwithstanding that Mr. Tuccio had transferred all rights to the invention to AudioAudit.

5. On January 20, 2004, I sent a letter to Mr. Tuccio, a copy of which is annexed hereto as Exhibit 1, requesting that, in accordance with counsel's request, he review the application and execute the Declaration. No response to my letter was received. The letter was not returned as being undeliverable.

6. Having not received a reply from Mr. Tuccio, I attempted to call him approximately six different times, at telephone number 908 414-0350. On each occasion, Mr. Tuccio did not

personally answer the call, but I left a message on his voicemail/answering machine requesting that he return my call and that he attend to the execution and return of the Declaration. None of my calls have been returned. Given the circumstances surrounding Mr. Tuccio's departure from the company, however, I did not hold out much hope that we would ever hear from Mr. Tuccio again.

7. I have been informed by counsel that an appropriate Petition must be filed on AudioAudit's behalf to permit the Patent and Trademark Office to accept the present application for examination and ultimate issuance as a patent without Mr. Tuccio's inventorship declaration. AudioAudit's interest in the application and invention is fully established by virtue of the recorded Assignment of all right, title and interest thereto from Mr. Tuccio to AudioAudit. Further, without acceptance of the application for examination, the rights thereto which have been transferred by Mr. Tuccio, and which include the inchoate rights to prevent others from the manufacture, use or sale of the invention claimed therein upon patent issue, would be lost, thereby depriving AudioAudit of both its exclusive rights to the invention as transferred to it by Mr. Tuccio and potential business opportunities associated therewith.

8. It is accordingly requested that the Patent and Trademark Office accept the present application for examination without the signature of Mr. Tuccio.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: MARCH 19, 2004


James Devine



AUDIOAUDIT

E-Mail
jdevine@audioaudit.com

Mack-Cali Centre II
One Mack Centre Drive
Paramus, New Jersey 07653
(201) 261-0001 Ex. 227

Fax
(201) 261-1808

January 20, 2004

Mr. Frank Tuccio
1809 Park Place
Springfield, NJ 07081

Re: AudioAudit Patent Application

Dear Frank:

Enclosed you will find a self-explanatory letter I recently received from Jay Bondell. Although you have already assigned this Patent Application to AudioAudit, apparently we need your signature on the attached declaration and power of attorney. If it is not a problem, please sign & date the enclosed declaration where indicated returning it in the enclosed stamped self-addressed return envelope.

Hope you had good holidays & having a good 2004. When you get a minute give me a call either in the office or on my cell (908) 400-2245. I'd like to catch up & see how you guys are doing. Say hi to Barbara for me.

Very truly yours,

Jim Devine

AudioAudit Inc.

This document contains proprietary information and is not for use or distribution outside of AudioAudit Inc. without written authorization.

DECLARATION AND POWER OF ATTORNEY

AudioAudit Inc., as assignee of the invention set forth in U.S. Patent Application No. 10/659,514 filed September 10, 2003, declares that:

Its post office address and State of Incorporation are as stated below next to its name.

It believes Frank Tuccio, a citizen and resident of the State of New Jersey, having a residence and mailing address at 1809 Park Place, Springfield, New Jersey 07081, to be the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled **Remote Sensing System**, the specification of which was filed on September 10, 2003 under Serial No. 10/659,514.

That it has reviewed and understands the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

It acknowledges the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

It hereby claims foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate for the same invention having a filing date before that of the application on which priority is claimed: **NONE**

It hereby claims the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, it acknowledges the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

U.S. Provisional Appln. S.N. 60/410,632, Filed September 13, 2002

And it hereby appoints Jay A. Bondell, Esq., Registration No. 28,188; Fritz L. Schweitzer, Jr., Esq., Registration No. 17,402; Michael A. Cornman, Esq., Registration No. 20,672; Meyer A. Gross, Esq., Registration No. 22,036; Fritz L. Schweitzer III, Registration No. 39,363; Rebecca C. Pergrim, Registration No. 50725 and Robert I. Pearlman, Registration No. 18,881 to prosecute this

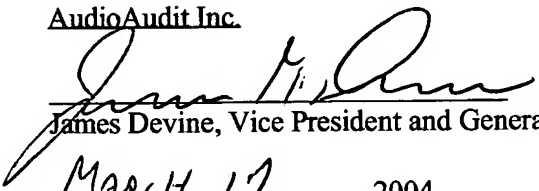
application and to transact all business in the Patent Office connected therewith, and it hereby requests that all correspondence herein be directed to SCHWEITZER CORNMAN GROSS & BONDELL LLP, 292 Madison Avenue, New York, New York 10017.

It hereby declares that all statements made herein of its own knowledge are true and that all statements made on information and belief are believed to be true; and, further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of

Assignee: AudioAudit Inc.

By:


James Devine, Vice President and General Counsel

Date:

MARCH 17, 2004

Post Office and Mailing Address: Mack-Cali Centre II, One Mack Centre Drive,
Paramus, New Jersey 07653

State of Incorporation: Delaware, USA